WARREN R. HAAS

IBLA 80-904 Decided August 28, 1981

Appeal from decision of Wyoming State Office, Bureau of Land Management, declaring overriding royalty interest null and void ab initio. W 63057.

Reversed and remanded.

1. Contracts: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

APPEARANCES: William J. Thomson, Esq., Cheyenne, Wyoming, for appellant; Harold J. Baer, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Warren R. Haas has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 30, 1980, declaring his overriding royalty interest in noncompetitive oil and gas lease W 63057, null and void ab initio for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979). 1/

1/ The Department amended certain regulations governing oil and gas leasing effective June 16, 1980. See 45 FR 35156 (May 23, 1980). The amended regulation as to sole party in interest is 43 CFR 3102.2-7.

Appellant's drawing entry card (DEC) was drawn with first priority for parcel No. WY-86 at a noncompetitive oil and gas lease sale. On that card appellant listed himself as the sole party in interest. The lease was issued on May 1, 1978, and assigned to Banner Oil and Gas, Ltd. (Banner), on August 1, 1978, with appellant retaining a 6.25 percent overriding royalty interest. 2/

By letter dated October 17, 1979, BLM indicated to appellant that it had information that his DEC had been filed by an agent and requested a copy of the "agency agreement" in order to determine whether the lease had been properly issued. Appellant complied, submitting a copy of a service agreement with Federal Energy Corporation (FEC), dated January 31, 1977.

In its July 1980 decision BLM stated that paragraph 3 of the service agreement indicates that FEC has an "undisclosed interest" in appellant's lease offer. That paragraph provides: "Security Interest. Client hereby grants a security interest in any Federal Lease awarded to Client to secure payment of lease rentals advanced by FEC on Client's behalf." 3/

The service agreement generally provides that, in consideration of "the non-refundable sum of $22,500" payable in advance, FEC will "file 1,000 applications at the rate of approximately 42 each per month, pursuant to FEC's Federal Oil Land Acquisition Program" on behalf of appellant. Further, appellant agreed to pay FEC, "[i]n addition * * * against invoice of FEC, all costs of applications awarded to Client [appellant and his wife], including the first year's advance rental with respect thereto." The term of the agreement was 1 year, with an option to continue, and the agreement could "not be terminated by either party during the term" thereof.

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fn. 1 (continued)
45 FR 35162 (May 23, 1980). References herein are to 43 CFR Part 3100 (1979).

2/ Banner was declared a bona fide purchaser under this assignment pursuant to 43 CFR 3102.1-2 (1979) in a decision by this Board, dated Apr. 11, 1980. Geosearch, Inc., 47 IBLA 39 (1980), aff'd, Geosearch, Inc. v. Andrus, 508 F. Supp. 839 (D. Wyo. 1981). The Board made no decision as to the propriety of appellant's lease offer.

3/ Although it is characterized in the service agreement as a "security interest," in the strict legal sense, the interest is not a "security interest," as defined and governed by Article 9 of the Uniform Commercial Code (UCC). Article 9 of the UCC is expressly not applicable "to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder." Anderson, Uniform Commercial Code, § 9-104(j) (2d ed. 1971). A "security interest" is generally defined as "an interest in personal property or fixtures that secures payment or performance of an obligation." Id. at § 1-201:109; 68 Am. Jur. 2d, Secured Transactions § 36 (2d ed. 1973). An oil and gas lease is not properly the subject of a UCC Article 9 "security interest."

[1] The Departmental regulation on "sole party in interest," 43 CFR 3102.7, provides that a separate statement signed by "other interested parties" and the offeror, "setting forth the nature and extent of the interest of each in the offer," and a copy of their written agreement must be filed "not later than 15 days after the filing of the lease offer." Failure to comply will result in rejection of the lease offer or cancellation of any lease issued pursuant to the offer or any overriding royalty interest. Home Petroleum Corp., 54 IBLA 194, 88 I.D. 479 (1981), appeals pending, Pagedas v. Watt, No. C 81-226 (D. Wyo. filed July 23, 1981), and Geosearch Inc. v. Watt, No. C 81-0208 (D. Wyo. filed Aug. 7, 1981); Wayne E. DeBord, 50 IBLA 216, 87 I.D. 465 (1980), appeal pending, Landis v. Andrus, No. 80-2110 (D. Idaho, filed Dec. 23, 1980). 4/

The question for decision is whether FEC had an interest in appellant's offer and lease to be issued such as to require appellant to comply with the disclosure requirements of 43 CFR 3102.7. An "interest" in a lease is:

> Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed.

43 CFR 3100.0-5(b).

In his statement of reasons for appeal, appellant contends that FEC did not have an interest in leases issued to him pursuant to offers filed under the service agreement. Appellant argues that he had the "option" to permit FEC to advance lease rentals. He states that he, therefore, had "the option to prevent any interest from going to FEC by either not requesting FEC to advance the first year's rental or paying to FEC the amount of the first year's rental advanced prior to the issuance of the lease." He explains that the latter situation is what happened in this case. Accordingly, he concludes: "There was no vested interest at the time the DEC offer was filed. Only if [he] * * * elected the option, the lease was issued, and [he] * * * defaulted could an interest arise in FEC." Appellant characterizes this as a "mere hope or expectancy," citing Geosearch, Inc., 40 IBLA 401 (1979), and Geosearch, Inc., 40 IBLA 267 (1979).

Appellant also states that FEC had no interest in sales or assignments of leases issued to him pursuant to offers filed under the service agreement. Finally, appellant argues that FEC had no interest because a title search prior to the assignment to Banner revealed no undisclosed third party interests; Banner acquired the lease as a bona fide purchaser "free of any * * * interest"; and Wyoming law requires the recordation of transfers of oil and gas interests in land and the service agreement is not recordable.

4/ The DeBord case was modified in Frederick J. Schlicher, 54 IBLA 61 (1981), to an extent not applicable herein.

We have held that where a leasing service merely advances funds on behalf of a client, entitling it to reimbursement, but there is no obligation on the client to transfer any interest in any lease issued to the leasing service, the leasing service does not have an "interest." See, e.g., Geosearch, Inc., 39 IBLA 49 (1979); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). The leasing service merely has a "general right of repayment." Wayne E. DeBord, supra, at 220, 87 I.D. at 468; see John V. Steffens, 74 I.D. 46, 53 (1967) (right to "recover").

In this case we must analyze the agreement to determine if it creates an "interest within the meaning of 43 CFR 3100.0-5(b). As we have stated, the definition of "interest" is broad. Wayne E. DeBord, supra at 220, 87 I.D. at 469. It includes "[a]ny claim or any prospective or future claim to an advantage or benefit from a lease." 43 CFR 3100.0-5(b). We have held that various arrangements constitute an "interest." In Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981), we held that where the agreement provides that the leasing service is authorized as the sole and exclusive agent to negotiate the sale or assignment of any lease issued pursuant to any offer filed under the agreement in return for a specified commission, payable even if the offeror negotiates the sale or assignment, the leasing service has an "interest." In H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979), aff'd, Enevoldsen v. Andrus, No. C-80-0047B (D. Wyo. June 24, 1981), we found an "interest" where through an oral agreement the offeror granted another person a first right to buy any lease issued. We concluded that "[t]he fact that the lessor could choose not to sell the lease does not diminish the right." Id. at 91, 86 I.D. at 653-54.

Furthermore, in Wayne E. DeBord, supra, we held that where a pooling agreement provides that a party is authorized to advance funds for filing and for paying rentals, and where the party is entitled to an unspecified consultation fee and office expenses, all to be reimbursed with interest from the proceeds of the sale or assignment of any lease issued, that person has an interest in each lease offer made pursuant to the agreement. Id. at 220, 87 I.D. at 468-69.

On the other hand, in cases where the agreement with a leasing service provides that the client has the option of retaining the leasing service to sell any lease issued pursuant to an offer filed under the agreement in return for a specified commission or of selling the lease to the leasing service, the Board has stated that the leasing service does not have an "interest." See, e.g., Phillip A. Kulin, 53 IBLA 57 (1981); Geosearch, Inc., 48 IBLA 190 (1980). This is the nature of the Geosearch, Inc., cases cited by appellant.

Appellant has argued that he had the option of allowing FEC to advance the first year's rental. While the language of the service agreement is not unequivocal concerning the creation of such an option, it is clear under the facts of this case that the parties operated in such a fashion. FEC contacted appellant. Appellant requested FEC to advance the rental, and prior to issuance of the lease, appellant forwarded a check to FEC in the amount of the first year's rental. See

Exhibit "A," Affidavit of Walter R. Haas, attached to appellant's statement of reasons. In this case no security interest was activated. If appellant had failed to reimburse FEC, under the terms of the agreement FEC would have been provided with security for repayment. We do not believe, however, that the service agreement created an "interest" within the meaning of 43 CFR 3100.0-5(b).

With respect to a prospective or future claim, 43 CFR 3100.0-5(b) provides that it must be a claim "to an advantage or benefit from the lease." In this case we cannot find that FEC derives any advantage or benefit from a lease issued pursuant to an offer filed under the service agreement. FEC is merely entitled to reimbursement for the amount of the rental advanced on appellant's behalf. The agreement provides only that a lease will be security for that payment. This case may be distinguished from Wayne E. DeBord, supra, in that in DeBord the agreement called for reimbursement with interest from the proceeds of the sale of any lease issued. In addition, the pooling agreement in DeBord provided that proceeds from the lease of any member could be used by a certain individual to reduce or discharge the debt owed to him by all the members for services rendered in connection with all the offers and leases involved.

Herein, FEC is not seeking an advantage or benefit from a lease. FEC is providing a service to its customers. If a customer wins a lease in a drawing and is unavailable to pay the lease rental for whatever reason (out of town on business in this case), FEC will advance the rental. The agreement does not mention interest on the advanced funds, or any fee or commission for such service.

Accordingly, at the time appellant's DEC was filed FEC did not have an "interest" within the meaning of 43 CFR 3100.0-5(b), for which disclosure would be required under 43 CFR 3102.7.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM for further action consistent herewith.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge